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Attorneys for Plaintiff: JAMES RUTHERFORD

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION

JAMES RUTHERFORD, an  
individual,  
  
Plaintiff,

v.

RED LION INN AND SUITES, a  
business of unknown form; REST  
BEST, LLC, a California limited  
liability corporation; and DOES 1-  
10, inclusive,

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For:**

- 1. VIOLATIONS OF THE  
AMERICANS WITH DISABILITIES  
ACT OF 1990, 42 U.S.C. §12181 *et*  
*seq.***
- 2. VIOLATIONS OF THE UNRUH  
CIVIL RIGHTS ACT, CALIFORNIA  
CIVIL CODE § 51 *et seq.***

Plaintiff, JAMES RUTHERFORD (“Plaintiff”), complains of Defendants  
RED LION INN AND SUITES, a business of unknown form; REST BEST, LLC, a  
California limited liability corporation; and DOES 1-10 (“Defendants”) and alleges  
as follows:

**PARTIES:**

1  
2 1. Plaintiff is an adult California resident. Plaintiff is substantially limited  
3 in performing one or more major life activities, including but not limited to:  
4 walking, standing, ambulating, sitting, in addition to twisting, turning, and grasping  
5 objects. As a result of these disabilities, Plaintiff relies upon mobility devices,  
6 including at times a wheelchair, to ambulate. With such disabilities, Plaintiff  
7 qualifies as a member of a protected class under the Americans with Disabilities Act  
8 (“ADA”), 42 U.S.C. §12102(2) and the regulations implementing the ADA set forth  
9 at 28 C.F.R. §§ 36.101 et seq. At the time of Plaintiff’s visits to Defendant’s facility  
10 and prior to instituting this action, Plaintiff suffered from a “qualified disability”  
11 under the ADA, including those set forth in this paragraph. Plaintiff is also the  
12 holder of a Disabled Person Parking Placard.  
13  
14

15 2. Plaintiff brings this action acting as a “private attorney general” as  
16 permitted under the American with Disabilities Act of 1990 (“ADA”) to privatize  
17 enforcement of the ADA without the American tax payer(s) bearing the financial tax  
18 burden for such action.

19 3. Defendant REST BEST, LLC, a California limited liability corporation,  
20 owned the property located at 480 S. Redlands Avenue, Perris, CA 92570  
21 (“Property”) in May, 2018 and September, 2018.

22 4. Defendant REST BEST, LLC, a California limited liability corporation,  
23 owns the Property currently.

24 5. RED LION INN AND SUITES a business entity form unknown,  
25 owned, operated and controlled the business of Red Lion Inn and Suites  
26 (“Business”) in May, 2018 and September, 2018

27 6. RED LION INN AND SUITES, a business entity form unknown, owns,  
28 operates and controls the Business currently.

1           7.     Plaintiff does not know the true names of Defendants, their business  
2 capacities, their ownership connection to the Property and Business, or their relative  
3 responsibilities in causing the access violations herein complained of, and alleges a  
4 joint venture and common enterprise by all such Defendants. Plaintiff is informed  
5 and believes that each of the Defendants herein, including Does 1 through 10,  
6 inclusive, is responsible in some capacity for the events herein alleged, or is a  
7 necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend  
8 when the true names, capacities, connections, and responsibilities of the Defendants  
9 and Does 1 through 10, inclusive, are ascertained.

### 10                           **JURISDICTION AND VENUE**

11           8.     This Court has subject matter jurisdiction over this action pursuant  
12 to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans  
13 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. ("ADA").

14           9.     This court has supplemental jurisdiction over Plaintiff's non-federal  
15 claims pursuant to 28 U.S.C. § 1367, because Plaintiff's UCRA claims are so  
16 related to Plaintiff's federal ADA claims in that they have the same nucleus of  
17 operative facts and arising out of the same transactions, they form part of the same  
18 case or controversy under Article III of the United States Constitution.

19           10.    Venue is proper in this court pursuant to 28 U.S.C. §1391 because the  
20 Property which is the subject of this action is located in this district and because  
21 Plaintiff's causes of action arose in this district.

### 22                           **FACTUAL ALLEGATIONS**

23           11.    Plaintiff went to the Business in May, 2018 and September, 2018 to  
24 rent a room.

25           12.    The Business, including the Property, is a facility open to the public, a  
26 place of public accommodation, and a business establishment.

27           13.    Parking spaces are some of the facilities, privileges and advantages  
28 reserved by Defendants to persons patronizing the Business and Property.

1           14. Unfortunately, although parking spaces were some of the facilities  
2 reserved for patrons, there were barriers for persons with disabilities that cause the  
3 named facilities to fail as to compliance with the Americans with Disability Act  
4 Accessibility Guidelines (“ADAAG”) in May, 2018 and September, 2018, or at any  
5 time thereafter up to and including, the date of the filing of this complaint.

6           15. Instead of having architectural barrier free facilities for patrons with  
7 disabilities, Plaintiff experienced the following at the Business and Property: there is  
8 no ADASAD compliant van accessible parking signage at the parking spaces near  
9 the main entrance in violation of Section 502.6; the ramp at the accessible parking  
10 space access aisle in the rear parking area has a slope of 23% which exceeds the  
11 maximum allowed of 8.3% per Section 405.2; the curb ramp at the accessible  
12 parking located in the rear projects into the accessible parking space access aisle in  
13 violation of Section 406.5 which requires that curb ramps and the flared sides of  
14 curb ramps shall be located so that they do not project into vehicular traffic lanes,  
15 parking spaces, or parking access aisles; and, the accessible parking spaces serving  
16 the main entrance have slopes and counter slopes exceeding 4% at the front parking  
17 spaces and 5% at the rear parking spaces where 502.4 prohibits a slope in excess of  
18 2%.

19           16. Subject to the reservation of rights to assert further violations of law  
20 after a site inspection found *infra*, Plaintiff asserts there are additional ADA  
21 violations which affect him personally.

22           17. Plaintiff is informed and believes and thereon alleges that, currently,  
23 there are no compliant, accessible Business facilities designed, reserved and  
24 available to persons with disabilities at the Business in addition to that alleged *supra*.

25           18. Plaintiff is informed and believes and thereon alleges that Defendants  
26 had no policy or plan in place to make sure that the parking spaces were compliant  
27 for persons with disabilities and remained compliant prior to May, 2018 and  
28 September, 2018.

1           19. Plaintiff is informed and believes and thereon alleges Defendants have  
2 no policy or plan in place to make sure that the complaints of violations alleged  
3 above are available to persons with disabilities and remain compliant currently.

4           20. Plaintiff personally encountered the above alleged barriers when  
5 attempting to access the Business and Property. These inaccessible conditions  
6 denied the Plaintiff full and equal access and caused him difficulty, humiliation,  
7 frustration and upset.

8           21. As an individual with a mobility disability who at times is dependent  
9 upon a mobility device, Plaintiff has a keen interest in whether public  
10 accommodations have architectural barriers that impede full accessibility to those  
11 accommodations by individuals with mobility impairments.

12           22. Plaintiff is being deterred from patronizing the Business and its  
13 accommodations on particular occasions, but intends to return to the Business for the  
14 dual purpose of availing himself of the goods and services offered to the public and  
15 to ensure that the Business ceases evading its responsibilities under federal and state  
16 law.

17           23. As a result of his difficulty, humiliation, and frustration because of the  
18 inaccessible condition of the facilities of the Business, Plaintiff did not fully access  
19 the Business or Property. However, Plaintiff would like to return to the location  
20 given its close proximity to an area he frequents from time to time.

21           24. The defendants have failed to maintain in working and useable  
22 conditions those features required to provide ready access to persons with  
23 disabilities.

24           25. The violations identified above are easily removed without much  
25 difficulty or expense. They are the types of barriers identified by the Department of  
26 Justice as presumably readily achievable to remove and, in fact, these barriers are  
27 readily achievable to remove. Moreover, there are numerous alternative  
28 accommodations that could be made to provide a greater level of access if complete

1 removal were not achievable.

2       26. Given the obvious and blatant violation alleged hereinabove, Plaintiff  
3 alleges, on information and belief, that there are other violations and barriers in the  
4 site that relate to his disabilities. Plaintiff will amend the complaint, to provide  
5 proper notice regarding the scope of this lawsuit, once he conducts a site inspection.  
6 However, please be on notice that Plaintiff seeks to have all barriers related to their  
7 disabilities remedied. See *Doran v. 7-11*, 524 F.3d 1034 (9<sup>th</sup> Cir. 2008) (holding  
8 that once a plaintiff encounters one barrier at a site, he can sue to have all barriers  
9 that relate to his disability removed regardless of whether he personally encountered  
10 them).

11       27. Given the obvious and blatant violation alleged hereinabove, Plaintiff  
12 alleges, on information and belief, that the failure to remove these barriers was  
13 intentional because: (1) these particular barriers are intuitive and obvious; (2) the  
14 defendants exercised control and dominion over the conditions at this location, and  
15 therefore, (3) the lack of accessible facilities was not an accident because had the  
16 defendants intended any other configuration, they had the means and ability to make  
17 the change.

18       28. Without injunctive relief, plaintiff will continue to be unable to fully  
19 access Defendants' facilities in violation of Plaintiff's rights under the ADA.

20                   **FIRST CAUSE OF ACTION**

21       **VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990,**

22                   **42 U.S.C. § 12181 et seq.**

23       29. Plaintiff re-alleges and incorporates by reference all paragraphs alleged  
24 above and each and every other paragraph in this Complaint necessary or helpful to  
25 state this cause of action as though fully set forth herein.

26       30. Under the ADA, it is an act of discrimination to fail to ensure that the  
27 privileges, advantages, accommodations, facilities, goods, and services of any place  
28 of public accommodation are offered on a full and equal basis by anyone who owns,

1 leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a).

2 Discrimination is defined, inter alia, as follows:

- 3 a. A failure to make reasonable modifications in policies, practices,  
4 or procedures, when such modifications are necessary to afford  
5 goods, services, facilities, privileges, advantages, or  
6 accommodations to individuals with disabilities, unless the  
7 accommodation would work a fundamental alteration of those  
8 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 9 b. A failure to remove architectural barriers where such removal is  
10 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
11 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,  
12 Appendix "D".
- 13 c. A failure to make alterations in such a manner that, to the  
14 maximum extent feasible, the altered portions of the facility are  
15 readily accessible to and usable by individuals with disabilities,  
16 including individuals who use wheelchairs, or to ensure that, to  
17 the maximum extent feasible, the path of travel to the altered area  
18 and the bathrooms, telephones, and drinking fountains serving  
19 the area, are readily accessible to and usable by individuals with  
20 disabilities. 42 U.S.C. § 12183(a)(2).

21 31. Any business that provides parking spaces must provide accessible  
22 parking spaces. 1991 Standards § 4.1.2(5). 2010 Standards § 208. Under the 1991  
23 Standards, parking spaces and access aisles must be level with surface slopes not  
24 exceeding 1:50 (2.0%) in all directions. 1991 Standards § 4.6.2. Under the 2010  
25 Standards, access aisles shall be at the same level as the parking spaces they serve.  
26 Changes in level are not permitted. 2010 Standards § 502.4. "Access aisles are  
27 required to be nearly level in all directions to provide a surface for wheelchair  
28 transfer to and from vehicles." 2010 Standards § 502.4 Advisory. Specifically, built



up curb ramps are not permitted to project into access aisles and parking spaces. Id. No more than a 1:48 slope is permitted. Standards § 502.4.

32. Here, the failure to ensure that accessible facilities were available and ready to be used by Plaintiff is a violation of law.

33. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

34. Given its location and options, Plaintiff will continue to desire to patronize the Business but he has been and will continue to be discriminated against due to lack of accessible facilities and, therefore, seek injunctive relief to remove the barriers.

## **SECOND CAUSE OF ACTION**

### **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT, CALIFORNIA CIVIL**

#### **CODE § 51 *et seq.***

35. Plaintiff re-alleges and incorporates by reference all paragraphs alleged above and each and every other paragraph in this Complaint necessary or helpful to state this cause of action as though fully set forth herein.

36. California Civil Code § 51 *et seq.* guarantees equal access for people with disabilities to the accommodations, advantages, facilities, privileges, and services of all business establishments of any kind whatsoever. Defendants are systematically violating the UCRA, Civil Code § 51 *et seq.*

37. Because Defendants violate Plaintiff's rights under the ADA, they also violated the Unruh Civil Rights Act and are liable for damages. (Civ. Code § 51(f), 52(a).) These violations are ongoing.

38. Defendants' actions constitute intentional discrimination against Plaintiff on the basis of their individual disabilities, in violation of the UCRA, Civil Code § 51 *et seq.* Plaintiff is informed and believes and thereon alleges Defendants have been previously put on actual notice that its premises are inaccessible to



1 Plaintiff as above alleged. Despite this knowledge, Defendants maintain the  
2 Property and Business in an inaccessible form.

3 **PRAYER**

4 **WHEREFORE, Plaintiff prays that this court award damages provide relief as**  
5 **follows:**

6 1. A preliminary and permanent injunction enjoining Defendants from  
7 further violations of the ADA, 42 U.S.C. § 12181 *et seq.*, and UCRA, Civil Code §  
8 51 *et seq.* with respect to its operation of the Business and Subject Property; **Note:**  
9 **Plaintiff is not invoking section 55 of the California Civil Code and is not**  
10 **seeking injunctive relief under the Disable Persons Act at all.**

11 2. An award of actual damages and statutory damages of not less than  
12 \$4,000 per violation pursuant to § 52(a) of the California Civil Code and \$4,000 for  
13 each time he visits an establishment that contains architectural barriers that deny the  
14 Plaintiff of full and equal enjoyment of the premises (*Feezor v. Del Taco, Inc.*  
15 (2005) 431 F.Supp.2d 1088, 1091.)

16 3. An additional award of \$4,000.00 as deterrence damages for each  
17 violation pursuant to *Johnson v. Guedoir*, 218 F. Supp. 3d 1096; 2016 U.S. Dist.  
18 LEXIS 150740 (USDC Cal, E.D. 2016);

19 4. For reasonable attorneys' fees, litigation expenses, and costs of suit,  
20 pursuant to 42 U.S.C. § 12205; California Civil Code § 52;

**DEMAND FOR JURY TRIAL**

Plaintiff hereby respectfully request a trial by jury on all appropriate issues raised in this Complaint.

Dated: November 19, 2018

**MANNING LAW, APC**

By: /s/ Joseph R. Manning Jr., Esq.  
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